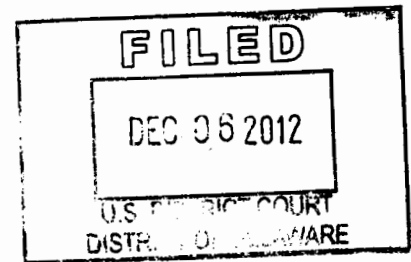


(Rev. 5/05)

**FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**



(1) James Arthur Higgins #11319264
(Name of Plaintiff) (Inmate Number)
James I. Higgins Correctional Center
Smymna, Delaware 19977
(Complete Address with zip code)

(2) _____
(Name of Plaintiff) (Inmate Number)

(Complete Address with zip code)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

vs.

(1) Col C Danberg, Comm of Dept of Corrections
(2) Christopher Klien, Asst. Dir. Prisoners of War
(3) Michael DeJoy, Bureau Chief of the Bureau of Prisons
(Names of Defendants)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

CIVIL COMPLAINT

• • Jury Trial Requested

I. PREVIOUS LAWSUITS

A. If you have filed any other lawsuits in federal court while a prisoner, please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

N/A

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

- A. Is there a prisoner grievance procedure available at your present institution? • Yes • • No
- B. Have you fully exhausted your available administrative remedies regarding each of your present claims? • • Yes • • No
- C. If your answer to "B" is Yes:
1. What steps did you take? occasions
 2. What was the result? _____
- D. If your answer to "B" is No, explain why not: _____

III. DEFENDANTS (in order listed on the caption)

- (1) Name of first defendant: Carl C. Damborg
Employed as Comm of Dept of Correction at Delaware Dept of Correction
Mailing address with zip code: 245 McKee Road
Dover, Delaware, 19904
- (2) Name of second defendant: Christopher Klien
Employed as Asst Deputy Asst to Comm at Delaware Dept of Correction
Mailing address with zip code: 245 McKee Road
Dover, Delaware 19904
- (3) Name of third defendant: Michael Deloy
Employed as Bureau of Prison, Bureau Chief at 245 McKee Road
Mailing address with zip code: Dover, Delaware 19904

(List any additional defendants, their employment, and addresses with zip codes, on extra sheets if necessary)

CONTINUUM OF DEFENDANTS

- (4) Perry Phelps, Warden at James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (5) James Scarborough, Deputy Warden at James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (6) David Pierce, Deputy Warden at James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (7) Medical Administrator (unknown) at Correct Care Solutions, Inc
245 McKee Road
Dover, Delaware 19904
- (8) Medical Director (unknown) at Correct Care Solutions, Inc
James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (9) Dr. _____ Bernard at Correct Care Solutions, Inc
James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (10) Jeffery Corrothers, Security Chf at James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (11) James Brownaw, Security Chf at James I. Vaughn Correctional Center
Smyrna, Delaware 19977
- (12) Dr. Louise Desrosiers at Correct Care Solutions, Inc
Smyrna, Delaware 19977

In the United States District Court
for the District of Delaware

James Arthur Biggins, Plaintiff,

vs.

Colt C. Donberg, Comm of the Dept of Corrections;
Christopher Mingo, Asst. Dir. Gen. to the Commissioner;
Michael Delany, Dir. of the Bureau of Prisons;
Perry Phelps, Warden, James I. Vaughn Corr. Ctr.;
James Scarborough, Asst. Warden, James I. Vaughn Corr. Ctr.;
David Pierce, Asst. Warden, James I. Vaughn Corr. Ctr.;
Jeffery Greenblatt, Security Off. James I. Vaughn Corr. Ctr.;
James Brennan, Security Off. James I. Vaughn Corr. Ctr.;
Medical Administrator (unknown), Correct Core Solutions, Inc.;
Medical Director (unknown), Correct Core Solutions, Inc.;
Dr. _____ Bernard, Correct Core Solutions, Inc.;
Defendants.

Civil Action No. _____

Complaint

Comes the Plaintiff, James Arthur Biggins, prose, pursuant to the Civil Rights of Institutionalized Persons Act, 57 (a), 42 U.S.C.A. § 1997 (e)(a), 10 Del.C. § 4001 et seq., and the Delaware Constitution of 1897, art. I, § 11 Mandating that in the construction of jails a proper regard shall be had to the health of prisoners, See *Wheeler v. Sullivan*, 630 F. Supp. 630, 651 (1984). In support of the Plaintiff's claims, the following is set forth:

1. The Plaintiff is incarcerated at the James I. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977-2.

2. On or about October 22, 2012, the Plaintiff submitted an "Emergency Sick Call" request after experiencing continuous excruciating pain in his left shoulder causing additional loss of sleep and loss of arm mobility. All movement of any degree increases the pain. The Plaintiff hasn't had the ability to sleep on his

1. All Defendants are listed in their individual and official capacities, occupational duties are incorporated as to the herein claims. 2. Plaintiff claims have not been exhausted and are raised pursuant to 28 U.S.C.A. § 1915(c) under imminent danger.

back, left side. Has not had any sound sleep or slept no longer than a few hours a night since mid October. And constantly walks around in pain "whinsing" and rubbing his shoulder, as well as have complained to building officers and supervising staff members (CO Sneed, CO Russell, CO Mitchell, CO Mc Daniels, Cpl. Barrett, Sgt. Legates, and Sgt. Jones) regarding not being seen for both sick call or by the doctor.

4. On or about November 4, 2012, RN. Clarie was depressing evening meds and I informed her that I had long placed a sick call to be seen for my left shoulder because it was causing me excruciating pain and lost of sleep.

5. RN. Clarie was further informed that on or about November 6, 2012, Plaintiff was evaluated on his sick call by an unknown nurse and told that she had made an appointment to see the doctor and was told she too would put him in to be seen. See, copy of medical grievance Attachment, Exhibit A.....

6. The next day RN. Clarie again depressed evening meds and affirmed that she had put him in to see the doctor and didn't know why he hadn't been seen.

7. On December 19, 2012, 1 month and 3 weeks after Plaintiff's initial sick call on November 6, 2012, Dr. Bernard evaluated him and refused to give him anything for pain or even order x-rays.

8. Dr. Bernard informed the Plaintiff that he could see that he was on "Mobic" muscle relaxer being given to assist in relieving pain for his herniated back disc and "Neurontin" on Epilepsy medication that has been known to have health care side effects for non-epilepsy patients and is not recommended as a pain relief drug also given for his herniated disc.

9. Dr. Bernard reasoned without explaining what was the cause of Plaintiff's shoulder's pain, that "pain medication doesn't just work on one problem. It attacks all pain in the body, no matter where or what is causing it" (Cf. Brown v. Hughes, 894 F.2d 1533 (11th Cir. 1995) (delay of a few hours in treating an inmate's broken foot could constitute a violation of the Eighth Amendment, holding that the failure to treat the pain from a broken foot, even for a few hours, was a constitutionally cognizable injury. With this type of injury, it may be that deliberately indifferent delay, no matter how brief, would render defendants liable as if they had inflicted the pain themselves).)

10. Dr. Bernard rebuffed the Plaintiff that the current dosages of medication depressed for him to cope with his herniated disc wasn't sufficient to remedy his pain in his shoulder. Despite not knowing the cause or extent of the injury, refusing to increase his pain medication and preferring him to undergo physical therapy. Which takes a minimum of 3-4 weeks to start.

3. The Plaintiff has informed that daily in addition to his pain, he experiences tingling all through his arm and has partial continuous numbness in his index and middle fingers on some arm.

Smyrna Landing Road
SMYRNA DE, 19977
Phone No. 302-653-9261

GRIEVANCE REPORT

OFFENDER GRIEVANCE INFORMATION

Offender Name : BIGGINS, JAMES A	SBI# : 00319264	Institution : JTVCC
Grievance # : 255291	Grievance Date : 11/25/2012	Category : Individual
Status : Unresolved	Resolution Status :	Resol. Date :
Grievance Type: Health Issue (Medical)	Incident Date : 11/25/2012	Incident Time :
IGC : Dutton, Matthew	Housing Location : Bldg 23, Upper, Tier B, Cell 10, Bottom	

OFFENDER GRIEVANCE DETAILS

Description of Complaint: Approximately on October 25, 2012 I submitted a sick call after having continuing severe pain in my left shoulder area. Please see entire grievance at top under scanner.

Remedy Requested :

ADDITIONAL GRIEVANCE INFORMATION

Medical Grievance : YES	Date Received by Medical Unit : 11/26/2012
Investigation Sent : 11/26/2012	Investigation Sent To : Walpole, Lorraine
Grievance Amount :	

INFORMAL RESOLUTION

OFFENDER GRIEVANCE INFORMATION

Offender Name : BIGGINS, JAMES A	SBI# : 00319264	Institution : JTVCC
Grievance # : 255291	Grievance Date : 11/25/2012	Category : Individual
Status : Unresolved	Resolution Status:	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 11/25/2012	Incident Time :
IGC : Dutton, Matthew	Housing Location : Bldg 23, Upper, Tier B, Cell 10, Bottom	

INFORMAL RESOLUTION

Investigator Name : Walpole, Lorraine	Date of Report: 11/26/2012
Investigation Report :	
Reason for Referring:	

Offender's Signature: _____

Date : _____

Witness (Officer) : _____

FORM #585

MEDICAL GRIEVANCE

L. Wg/pole

FACILITY: James I. Vaughn Correctional CenterINMATE'S NAME: James Arthur BigginsHOUSING UNIT: #23/B-11-10DATE SUBMITTED: Nov 25, 2012SBI#: #319264CASE #: 255291

RECEIVED

NOV 25 2012

JWCC
GRIEVANCE OFFICE

SECTION 1

DATE & TIME OF MEDICAL INCIDENT: On-going

TYPE OF MEDICAL PROBLEM:

Approximately on October 25, 2012, I submitted a sick call after having continuous severe pain in my left shoulder area. On Nov 6, 2012, I was seen by the African nurse who has along with nurse Caria confirm to me that they both have placed doctor appointments for me since the 6th of Nov, 2012. But I have not been seen by Dr. DeLoziers or the Black nurse practitioner, who's been seeing patients since she has been gone and reported up to 7 weeks. It has been exactly 5 weeks (35 days) and all I can get is the nurse's telling me "we put you in to see the doctor" is unacceptable. People are being seen so there's no reason why I haven't. Nurse Note, Cecilus Achy in 23/B-11-6 placed a sick call 3 weeks ago and already has gotten seen by the Black nurse practitioner who has replaced Dr. DeLoziers. I haven't been able to lay flat on my left side because of the pain. My left arm movement is restricted due to some. Can't get a good night sleep because some and have continuous "burning" and "tingling" in my fingers.

GRIEVANT'S SIGNATURE: James Arthur BigginsDATE: November 25, 2012

ACTION REQUESTED BY GRIEVANT: Ready by getting me the immediate care warranted. Please don't insult my intelligence with your ridiculous handouts or handouts guaranteeing making unexcepted excuse for your total inadequate staffing, training, and services of your medical department, despite lawsuits and all your former policy changes. You are completely "inept".

DATE RECEIVED BY MEDICAL UNIT: _____

NOTE: EMERGENCY MEDICAL CONDITIONS WILL TAKE PRIORITY. OTHERWISE, MEDICAL GRIEVANCES WILL BE ADDRESSED AT THE WEEKLY MEDICAL COMMITTEE MEETING.

11. Defendant's Call Center staff, Christopher Niles, Michael Deloy, Jerry Phelps, Donnie Scarborough, David Pierce, Ashley Carothers, Donnie Beeson as executive chief administrators operating under state authority in their individual and official capacities, having continuous and constant knowledge of the deficient medical services provided by Correct Care Solutions, Inc., and its medical services employees for more than 2 years. Have shown a deliberate indifference to the Plaintiff's health and safety, placing him under conditions creating imminent dangers" and causing unnecessary pain and suffering. *Washington v. Dugger*, 860 F.2d at 1021 (11th Cir. 1988) (reversing grant of summary judgment to prison officials on inmate's claim that delay in providing treatments that "eliminated pain and suffering at least temporarily" constituted deliberate indifference); *Anderson v. Cawington*, 483 U.S. at 640, 107 S.Ct. 3634, 97 L.Ed.2d 523 (1987).

12. Defendant's operating as Medical Administrator, Medical Director, Dr. Louise Derosiers and Dr. Bernard in their individual and official capacities for Correct Care Solutions, Inc., under state authority. Knowingly and willfully participate and practice continuously and constantly policies showing to be deliberate indifference to the Plaintiff's health and safety, placing him under conditions creating "imminent dangers" and causing unnecessary pain and suffering in their duties to provide medical treatment or delaying for non-medical reasons. *Ancata v. Person, Keith Jews, Inc.*, 769 F.2d at 740 (11th Cir. 1985) ("A jury could infer deliberate indifference from the fact that (Dr. Bernard) knew the extent of the Plaintiff's pain, knew that the course of treatment was largely ineffective, and decline to do anything more to attempt to improve Plaintiff's condition"); see also *West v. Kere*, 571 F.2d at 162 (3d Cir. 1978) (citing *Ancata*, 769 F.2d at 741).

13. Dr. Bernard failure to try to diagnose and treat Plaintiff's condition worsen, the defendant's decision he knew was an "easier and less efficacious course of treatment reflecting his deliberate indifference to the pain and suffering that Plaintiff is experiencing. *Ancata*, 769 F.2d 700 (11th Cir. 1985); *Waldrop v. Evans*, 871 F.2d at 1035 (11th Cir. 1989); *West v. Kere*, 571 F.2d at 162 (3d Cir. 1978).

14. Defendant's Medical Administrator, Medical Director, Dr. Louise Derosiers and Dr. Bernard decisions to imply policies delaying weeks leading to almost 2 months to be seen is intolerable and a product of deliberate indifference. *Harris v. Coweta County*, 21 F.3d at 393-94 (11th Cir. 1994); *Caswell v. Bay County*, 854 F.2d at 457 (11th Cir. 1988) (Although the medical staff diagnosed and provided some medication to the plaintiff, explaining that, because plaintiff's condition worsened and the jail medical staff failed to respond, "with evidence of knowledge the jury could have concluded that the failure to provide Caswell with medical care constituted deliberate indifference").

Prayer for Relief

Wherefore, Plaintiff respectfully prays that this Court:

- A. Declare that the acts and omissions described herein violated Plaintiff's rights under the Constitution and laws of the United States;
- B. Order the Defendant's to immediately cease course of medical treatment provided, and have defendant's have plaintiff examined by specialist and report of diagnosis made, course of action determined along with any and all medications needed;
- C. Order the Defendant's jointly and collectively to pay compensatory damages in the amount of \$100,000.00 one hundred thousand dollars;
- D. Order the Defendant's jointly and collectively to pay punitive damages in the amount of \$500,000.00 five hundred thousand dollars;
- E. Order the Defendant's jointly and collectively to pay for all future medical treatment and cost associated and/or occurred due to injuries received from deliberate indifference to serious medical need;
- F. Order the Defendant's jointly and collectively to pay reasonable attorney fees and costs; and
- G. Grant other just and equitable relief that this Honorable Court deems necessary.

By signing this complaint I certify that my allegations have evidentiary support; that my claims have arguable basis in the law; and that I have not filed this complaint to harass officials or for another improper purpose.

Dated: December 6, 2012

Respectfully submitted,
James Arthur Higgins
James Arthur Higgins 3/12/14
James I. Vaughn Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

LM. James T. Vaughn
SBI# 319264 UNIT 103
JAMES T. VAUGHN CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

US District Court
District of Delaware
Smyrna, Delaware
19977

Registered Mail

U.S. MAIL
PAY

